

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROSE CHUNG)	
Claimant)	
VS.)	
)	
STATE OF KANSAS)	Docket No. 175,956
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Jon L. Frobish on May 19, 1996, and Amended Award of June 24, 1996. The Appeals Board heard oral argument on December 19, 1996.

APPEARANCES

Staney R. Ausemus of Emporia, Kansas, appeared on behalf of the claimant. Richard L. Friedeman of Great Bend, Kansas, appeared on behalf of the respondent, a self-insured.

RECORD AND STIPULATIONS

The Appeals Board has adopted the stipulations and considered the record in the Award.

ISSUES

The Administrative Law Judge awarded benefits for a 15 percent permanent partial disability to the left upper extremity. Claimant contends that her injuries include injury to her shoulder. She argues that, because her injury was subject to the law as it existed prior to 1993 amendments, she is entitled to a general body disability. Because she was unable

to return to a comparable wage, she is entitled to a work disability pursuant to K.S.A. 44-1992 Supp. 510e.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the Award and Amended Award by the Administrative Law Judge should be affirmed. As above indicated, the point of dispute in this case is whether claimant's injury includes permanent disability to her shoulder. The law applicable at the time of claimant's injuries treated injury to the shoulder as an "unscheduled" injury which would entitle claimant to a general body disability and, potentially, work disability. The Administrative Law Judge found, however, that claimant had failed to establish permanent injury to her shoulder and for the reasons stated below the Appeals Board agrees.

Claimant testified that she began experiencing symptoms, including symptoms in her shoulder, beginning in the fall of 1992. She reported the problem to her employer and was referred to medical treatment by Mohammad Amawi, M.D. Claimant testifies that she reported the problems of her shoulder to Dr. Amawi.

The evidence reflects that claimant did report to her employer a problem with her left arm. She reported a problem with a cyst. This was treated initially by Dr. Amawi who performed surgery to remove the cyst. When that surgery did not relieve claimant's symptoms, he diagnosed carpal tunnel syndrome. Dr. Amawi performed a carpal tunnel release on claimant's left wrist on January 18, 1993, and in late February or early March performed an ulnar nerve release on claimant's left elbow.

Dr. Amawi testified that claimant did not make complaints regarding her shoulder until sometime in April 1993, after he had treated her for the cyst, carpal tunnel syndrome, and ulnar nerve conditions. Dr. Amawi ultimately concluded that claimant had zero percent permanent partial impairment in her left upper extremity.

Claimant attempted to return to work after the ulnar nerve surgery but was referred for further treatment to J. Mark Melhorn, M.D. After conservative treatment, Dr. Melhorn rated claimant's impairment at 17.45 percent of the left upper extremity but found that claimant had no permanent impairment in the shoulder.

Claimant offers testimony of Dr. Aly M. Mohsen. Dr. Mohsen's is the only expert testimony to directly link disability in claimant's shoulder to her work. The Administrative Law Judge referred claimant to Lawrence R. Blaty, M.D. Dr. Blaty's report concludes, on the basis of subjective complaints, that claimant has permanent impairment in the shoulder. He related the disability as 3 percent of the upper extremity. However, his report does not attribute the disability to claimant's work.

On balance, taking into consideration the record as a whole, the Appeals Board concludes that the claimant has failed to establish by a preponderance of the credible evidence that her injuries include a permanent injury to her shoulder. The Administrative Law Judge approved and adopted the functional impairment rating by Dr. Blaty, excluding the left shoulder, at 15 percent of the left upper extremity. The Appeals Board agrees that this rating reasonably evaluates claimant's disability and affirms that finding by the Administrative Law Judge.

AWARD

WHEREFORE, the Appeals Board finds that the Award of Administrative Law Judge Jon L. Frobish dated May 19, 1996, as amended June 24, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Richard L. Friedeman, Great Bend, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director